



Sentencing and Justice Reinvestment Initiative



Presentation to the Michigan Senate
Judiciary Committee & Appropriations
Subcommittee on Corrections

February 18, 2014

Carl Reynolds, Senior Legal & Policy Advisor
Andy Barbee, Research Manager
Ellen Whelan-Wuest, Policy Analyst
Shane Correia, Program Associate

The Council of State Governments, the Justice Center, and Our Justice Reinvestment Partners

- CSG - national non-profit, non-partisan membership association of state government officials that works with members of all three branches of state government
- CSG Justice Center - provides practical, nonpartisan advice informed by the best available evidence
- Justice Reinvestment ("JR") - a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.



THE
PEW
CHARITABLE TRUSTS



Key Findings by Theme

Use of Beds	<ul style="list-style-type: none">❖ Length of stay and prison population are controlled by parole❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	<ul style="list-style-type: none">❖ Opportunities for disparity are built in, and actual, significant disparity exists❖ Sentence length creep costs over \$70 million annually
Reducing Criminal Behavior	<ul style="list-style-type: none">❖ High-risk unsupervised after jail and low-risk felons supervised like high-risk❖ Resources may be misallocated❖ So What? - 7,000 new crimes annually by offenders on supervision
Holding Offenders Accountable	<ul style="list-style-type: none">❖ Guidelines silent on violation response❖ Forced choice between prison and post-prison supervision❖ Uneven responses to violations, and limited adoption of swift and sure sanctions❖ So What? - Compliance violators cost over \$150 million annually

Organization of Presentation

Project Background & Primer on Michigan Sentencing

Sentencing Disparity

Reducing Criminal Behavior & Holding Offenders Accountable

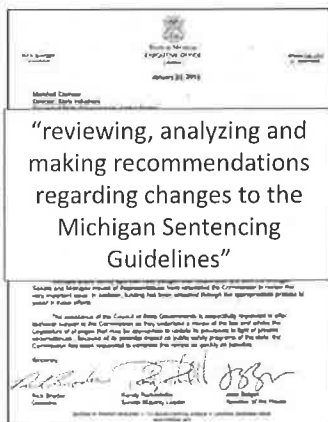
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Michigan "JR" Requested by Leadership and Contract Funded



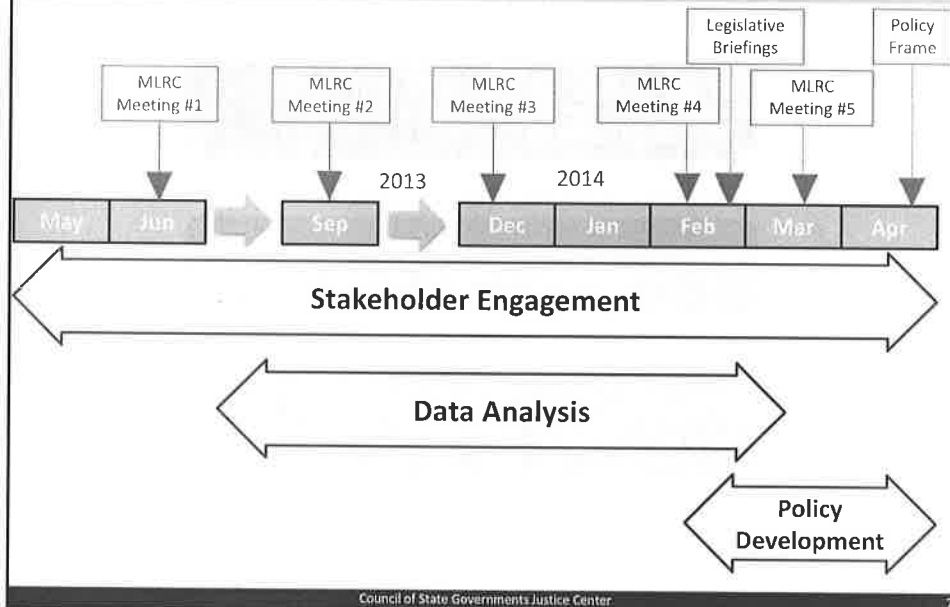
January 2013:
SB 233, Section 351

"The funds appropriated ...shall be used for a contract [between the Michigan Law Revision Commission and] the Council of State Governments to continue its review of Michigan's sentencing guidelines and practices, including, but not limited to, studying length of prison stay and parole board discretion."

May 2013-present:
Sentencing & Justice
Reinvestment Initiative

- ✓ 7.5 million data files from 10 databases
- ✓ 14 site visits
- ✓ 100 + meetings and 150 + conference calls
- ✓ 5 presentations to MLRC
- ✓ 9 presentations to prosecutors, judges, defense attorneys, victim advocates, sheriffs, county officials

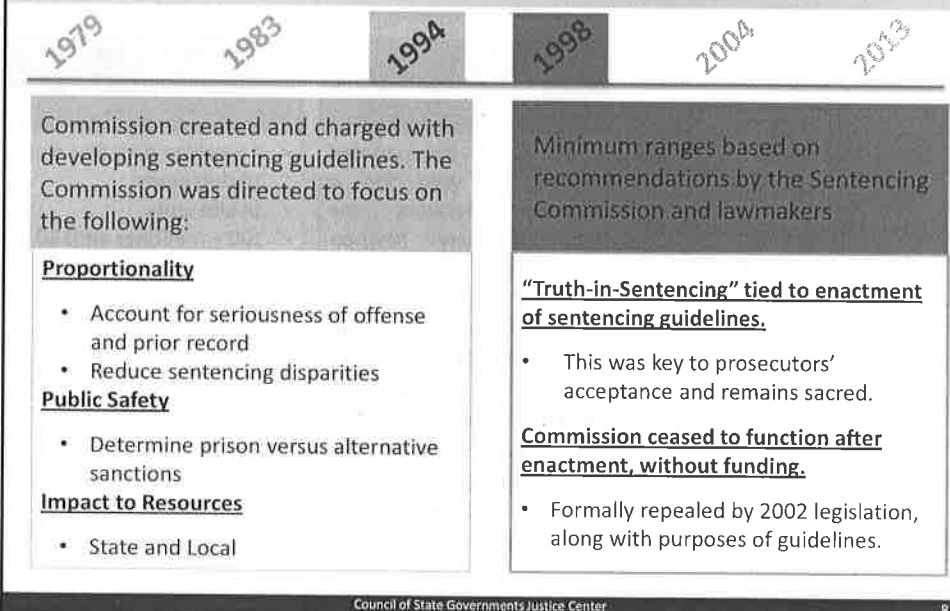
Project Timeline



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7

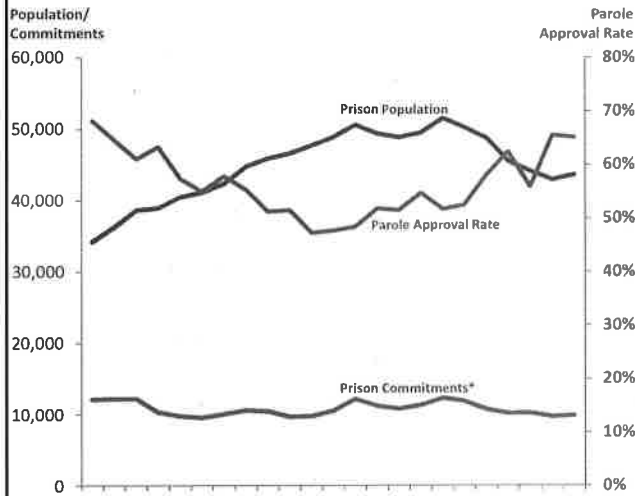
After 11 Years of Judicial Guidelines, Legislature Creates a Sentencing Commission and Adopts New Guidelines



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8

Parole Determines Prison Population While Guidelines Produce a Fairly Stable Flow of Prison Commitments



Since the early 1990s, the fluctuations in prison population and parole approval rates have been mirror opposites:

- As approval rates have declined, the prison population has risen.

* Prison commitments include new sentences, all probation violators (technical and new offense), and new offense parole violators.

Source: 2006-2011 Statistical Reports, MI Dept. of Corrections; 2008-2012 Intake Profiles, MI Dept. of Corrections; Trends in Key Indicators, MI Dept. of Corrections, February 2013.

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9

Finding the Correct Sentencing Range

Conviction Offense
(determines class and grid)

Prior Record
(determines column on grid)

Offense Variables
(determine row on grid)

Habitual Offender
(determines potential increases in sentence range)

Sentencing Grid for Class C Offenses—MCL 777.64

Sentencing Grid for Class B Offenses—MCL 777.63

Sentencing Grid for Class A Offenses—MCL 777.62
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

OV Level	PRV Level	A	B	C	D	E	F	Offender Points
I 0-9 Points	I 0-9 Points	15	45	70	85	135	180	
II 10-24 Points	II 10-24 Points	21	52	87	106	168	225	1002
III 25-34 Points	III 25-34 Points	27	67	105	127	202	270	1003
IV 35-49 Points	IV 35-49 Points	42	90	140	170	270	360	1004
		45	90	140	170	270	360	
		56	105	156	188	285	380	1005
		61	105	156	188	285	380	
		70	120	180	210	315	420	1006
		70	120	180	210	315	420	
		87	140	210	252	360	480	1007
		87	140	210	252	360	480	
		105	165	240	292	435	580	1008
		105	165	240	292	435	580	
		120	180	270	322	480	630	1009
		120	180	270	322	480	630	
		140	210	300	360	540	720	1010
		140	210	300	360	540	720	

An offender falling into the highlighted cell would face a minimum sentence of 51-106 months

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012.

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10

Three Different Sentencing Zones in Grids

Sentencing Grid for Class F Offenses—MCL 777.67
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)-(c))

Offense Level	A 0 Points	B 1-4 Points	C 5-9 Points	D 10-14 Points	E 15-19 Points	F 20-24 Points	G 25-29 Points	H 30-34 Points	I 35-39 Points	J 40-44 Points	K 45-49 Points	L 50-54 Points	M 55-59 Points	N 60-64 Points	O 65-69 Points	P 70-74 Points	Offense Name
I 1st Degree Murder	0	15	25	35	45	55	65	75	85	95	105	115	125	135	145	155	1st Degree Murder
II 2nd Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	2nd Degree Murder
III 3rd Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	3rd Degree Murder
IV 4th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	4th Degree Murder
V 5th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	5th Degree Murder
VI 6th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	6th Degree Murder
VII 7th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	7th Degree Murder
VIII 8th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	8th Degree Murder
IX 9th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	9th Degree Murder
X 10th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	10th Degree Murder
XI 11th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	11th Degree Murder
XII 12th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	12th Degree Murder
XIII 13th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	13th Degree Murder
XIV 14th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	14th Degree Murder
XV 15th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	15th Degree Murder
XVI 16th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	16th Degree Murder
XVII 17th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	17th Degree Murder
XVIII 18th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	18th Degree Murder
XIX 19th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	19th Degree Murder
XX 20th Degree Murder	0	10	20	30	40	50	60	70	80	90	100	110	120	130	140	150	20th Degree Murder

Prison

Very limited
punishment
type
discretion

Allowable punishment:

- ☐ Prison

Intermediate

Broad
punishment
type
discretion

Allowable punishments:

- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

Straddle

Very broad
punishment
type
discretion

Allowable punishments:

- ☐ Prison
- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

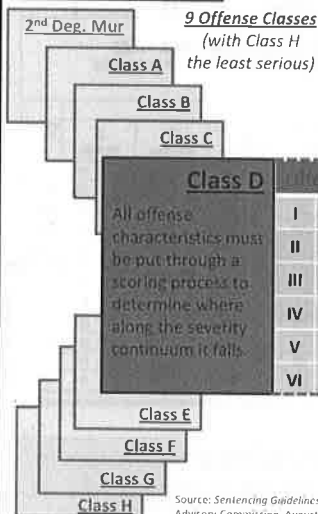
Source: Sentencing Guidelines Manual, Michigan Judicial Institute, June 2012.

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11

OV Scoring Is a Unique & Complex Michigan Feature For Classifying the Severity of Conduct

Michigan Guidelines



North Carolina Guidelines

10 Offense Classes
(with Class I the least serious)

Offense Class
A Most Severe
B1
B2
C
D Presumptive
E
F
G
H
I Least Severe

Many state grids capture offense severity in one row. Michigan has an additional dimension of scoring offense variables leading to many more potential rows into which an offense may fall.

Source: Sentencing Guidelines Manual, MI Judicial Institute, June 2012; and Structured Sentencing: Training and Reference Manual, NC Sentencing and Policy Advisory Commission, August 2004.

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12

Michigan Guidelines Do Not Control Length of Stay

Hypothetical where desired result is 5 years in prison...

Kansas: guidelines dictate maximum sentence and available time credits.

No less than
60 months
w/ good time

Max
sent
= 71
months

No parole board, but
offenders must "earn"
their way to the
minimum.

North Carolina: guidelines dictate minimum and maximum sentence.

Min sentence
= 60 months

Max
sent
= 84
months

Michigan: guidelines dictate minimum sentence range and the Parole Board controls the actual length of stay beyond the earliest release date (ERD).

Min sentence
= 60 months

Parole board determines when released.

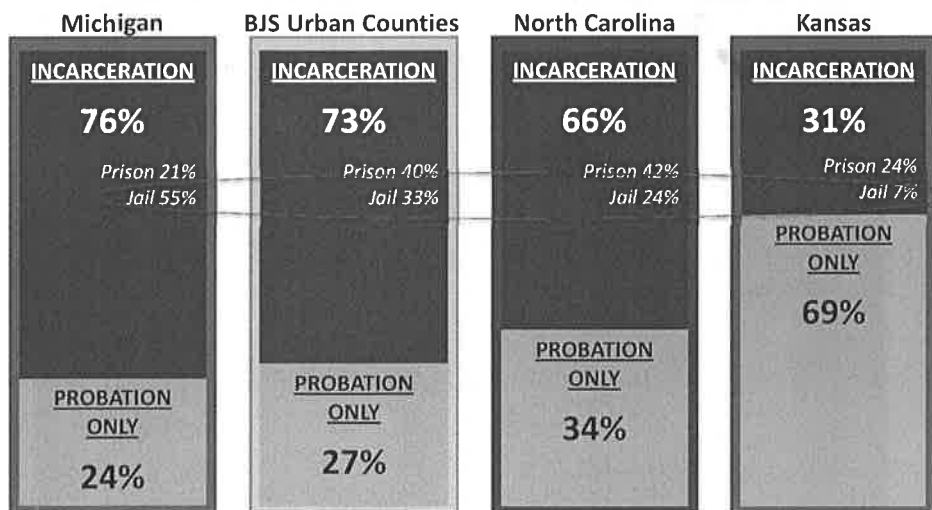
Max sentence = 180-240 months
(set in statute for specific offense)

Source: *Sentencing Guidelines Manual*, MI Judicial Institute, June 2012; *Kansas Sentencing Guidelines Desk Reference Manual 2012*, KS Sentencing Commission; and *Structured Sentencing: Training and Reference Manual*, NC Sentencing and Policy Advisory Commission, August 2004.

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13

Michigan Incarcerates Similar to National Averages But More than Other Guideline States, and More Through Jail

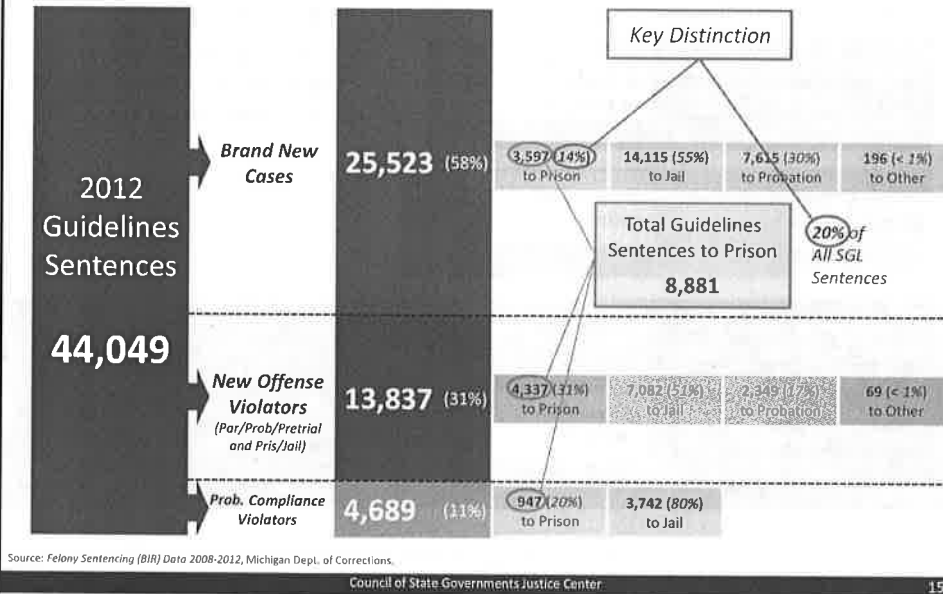


Source: *Statewide Dispositions – Fiscal Year 2012*, Office of Community Alternatives, MI Dept. of Corrections, November 2012; *Felony Defendants in Large Urban Counties*, 2006, May 2010, Bureau of Justice Statistics; Analysis of KS Felony Sentencing Data by CSG Justice Center; *Structured Sentencing Statistical Report FY 2011/12*, NC Sentencing and Policy Advisory Commission.

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14

14% of New Guidelines Cases Lead to Prison Versus 20% of All Guidelines Cases



Key Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	
Reducing Criminal Behavior	
Holding Offenders Accountable	

Organization of Presentation

Project Background & Primer on Michigan Sentencing

Sentencing Disparity

Reducing Criminal Behavior & Holding Offenders Accountable

Only 11 Percent of Cases Fall in Cells with Predictable Punishment – Prison Cells

Sentencing Grid for Class F Offenses—MCL 777.67
Includes Ranges Calculated for Habitual Offenders (MCL 777.21(2)(a)-(c))

Offense Level	A 0-6 Points	B 7-9 Points	C 10-14 Points	D 15-19 Points	E 20-24 Points	F 25-34 Points	Offense Range
I 0-6 Points	0 10 15	0 10 15	0 10 15	2 10 15	5 10 15	10 15 20	10-15 15-20 20-25
II 7-9 Points	0 10 15	0 10 15	0 10 15	5 10 15	10 15 20	12 15 20	12-15 15-20 20-25
III 10-14 Points	0 10 15	0 10 15	2 10 15	10 15 20	12 15 20	14 15 20	14-15 15-20 20-25
IV 15-19 Points	0 10 15	2 10 15	5 10 15	12 15 20	14 15 20	17 15 20	17-15 15-20 20-25

11% of Cases
But 54% of
grid cells

Prison

Very limited
punishment
type
discretion

Allowable punishment:

☐ Prison

62% of Cases

Intermediate

Broad
punishment
type
discretion

Allowable punishments:

- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

27% of Cases

Straddle

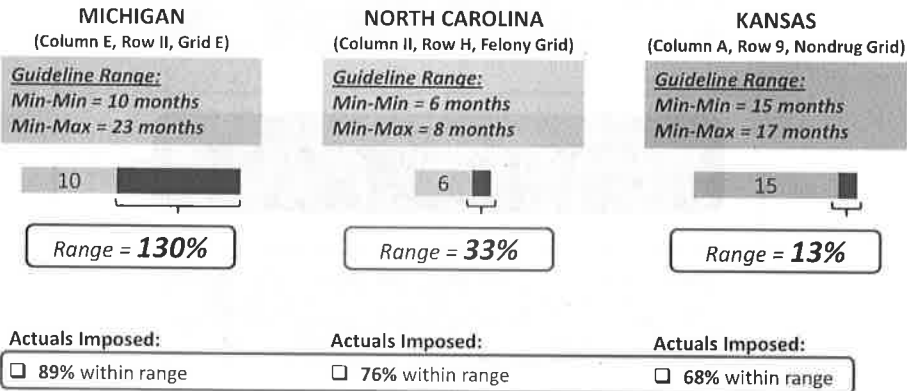
Very broad
punishment
type
discretion

Allowable punishments:

- ☐ Prison
- ☐ Up to 1 year in jail plus probation
- ☐ Jail only (1 year max)
- ☐ Probation only (5 year max)
- ☐ Fees/fines only

Michigan Ranges are Much Greater than Other Guidelines States; Fewer Departures as a Result

Each of the examples below summarizes non-habitual prison sentences from the most frequently used cell in the state's respective guidelines.



Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections; Structured Sentencing Statistical Report FY 2011/12, NC Sentencing and Policy Advisory Commission; Analysis of KS Felony Sentencing Data by CSG Justice Center.

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19

Geography Clearly Affects Sentencing

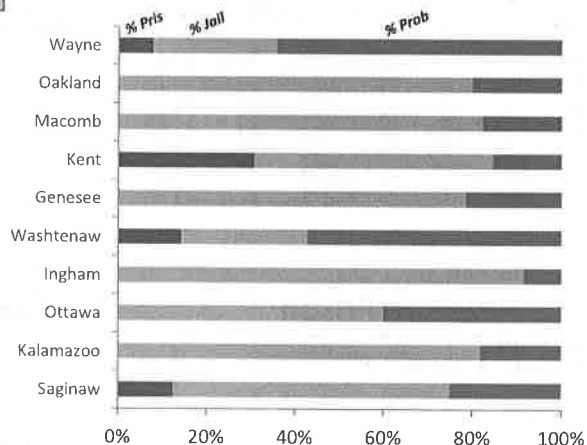
Sentencing breakdown of brand new cases in the 'E' grid 'Straddle' cells (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103

The 10 most populous counties accounted for 299 (74%) of the 402 sentences falling in this one straddle cell.

- 6 of the 10 counties didn't use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases



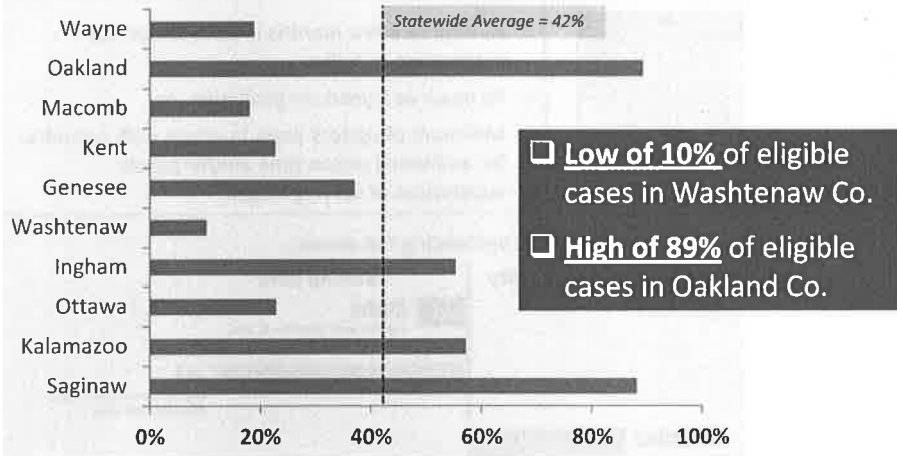
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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20

Geography Also Affects Use of Habitual Sentencing

Percent of Eligible Cases Sentenced as Habitual Offender in 2012 (SGL Prison Bound Only)



Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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21

Significant Disparity for the Same Offense in One Intermediate Sanction Cell

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

2012 Sentences = 3,409

	A	B	C	D	E	F
I	1.3%	13.6%	20.4%	17.6%	10.2%	9.2%
II	1.1%	1.1%	2.5%	2.9%	2.2%	1.8%
III	0.4%	0.2%	0.5%	0.7%	0.6%	0.7%

PRV Level A (489)

Pris:	2
Jail:	246
Prob:	238

58 Jail Only	188 Jail & Probation	238 Probation Only
– Jail terms ranging from 3 days to 365 days	– Jail terms ranging from 1 day to 365 days – Probation terms ranging from 30 days to 3 years	– Probation terms ranging from 30 days to 5 years

Despite falling in the same cell on the same grid for the same offense, defendants faced a wide range of possible punishments:

- As little as 3 days in jail,
- As much as 5 years on probation, or
- A combination of the two, with widely ranging lengths of jail and probation time.

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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22

Significant Disparity in One Straddle Cell

Sentencing breakdown of brand new cases in the 'E' grid **Straddle cells** (Non Habitual)

Total 2012 Sentences = 1,463

	A	B	C	D	E	F
I				402	128	103
II				359	141	69
III				77	26	
IV			69	36		
V		10	27			
VI		7	9			

Despite falling in the same cell on the same grid, **defendants punished disparately:**

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for additional prison time and/or parole supervision of varying length.

Very different sentencing outcomes...

Supervised in Community

Probation

Avg. term imposed = 24 mos.;
Range of 9-60 mos.

134

"Behind Bars"

43

Prison

Avg. min term imposed = 17 mos.;
Range of 6-36 mos.

224

Jail

Avg. term imposed = 6 mos.;
Range of 1-365 days.

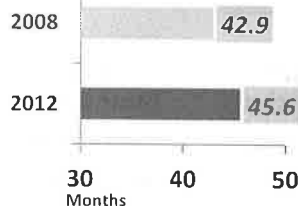
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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23

Minimum Prison Sentence Lengths Are Increasing With the Discretion Permitted

Length of Minimum Prison Sentence



2012 Prison Sentences

2.7 mos longer on average than in 2008

= additional
1,971 prisoners
on a given day

\$98
per day

**Additional
\$70 million
each year**

Increase for both
non-habitualized AND
habitualized offenders since
2008.

Increases in sentence lengths
across all grids and all cell types
(except Class B Straddle Cells).

Increase in minimum sentence lengths cannot be attributed to changes in scoring of cases on the guidelines: the cases aren't falling in more serious grids, or more serious offense levels, or in worse prior history levels.

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections; Corrections Background Briefing, December 2012, House Fiscal Agency.

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24

Preview: Parole and Sentencing Decisions Consider Many of the Same Factors – Is Consistency Affected?



Source: *Sentencing Guidelines Manual*, Michigan Judicial Institute, June 2012; *Parole Guidelines Policy*, Policy Directive Number 06 05.100, November 2008, Michigan Dept. of Corrections.

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25

Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	<ul style="list-style-type: none"> ❖ Opportunities for disparity are built in, and actual, significant disparity exists ❖ Sentence length creep costs over \$70 million annually
Reducing Criminal Behavior	
Holding Offenders Accountable	

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26

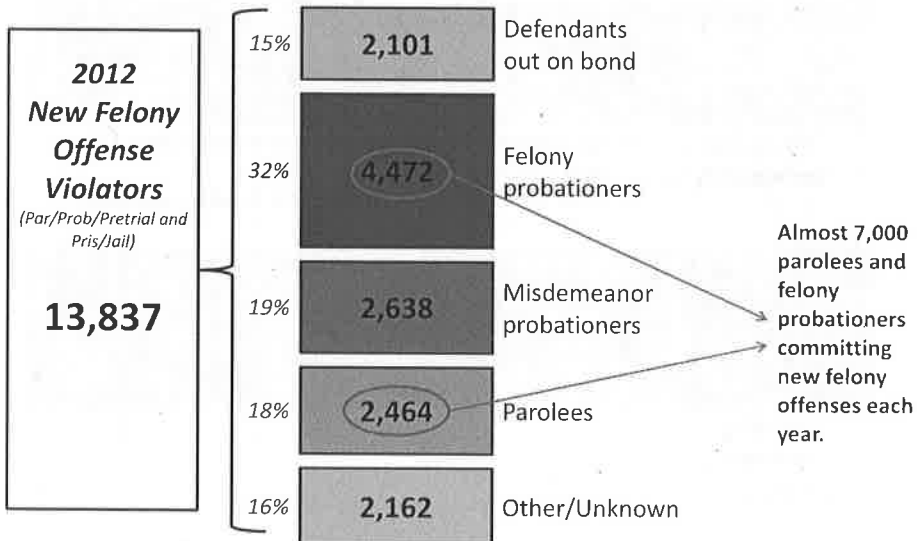
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Why It Matters in Michigan: One-Third of New Felony Offense Violators Are Felony Probationers



Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

Almost 1,200 Higher Risk Felons Sentenced to Jail Without Post-Release Supervision

"Brand New"
2012 SGL
Sentences by
Prior Record
Level

No prior
criminal
history

Significant criminal history

PRV Level	A	B	C	D	E	F
Total Sentences	7,307	4,339	6,414	4,116	1,973	1,374
Jail Only	361	230	530	602	333	246

These felons are higher recidivism risk by virtue of their criminal history (PRV) scores.

1,181 offenders with significant criminal history received sentences that involved no supervision at all (only received a period of time in jail).

– Represents 16% of total cases involving offenders with significant criminal history

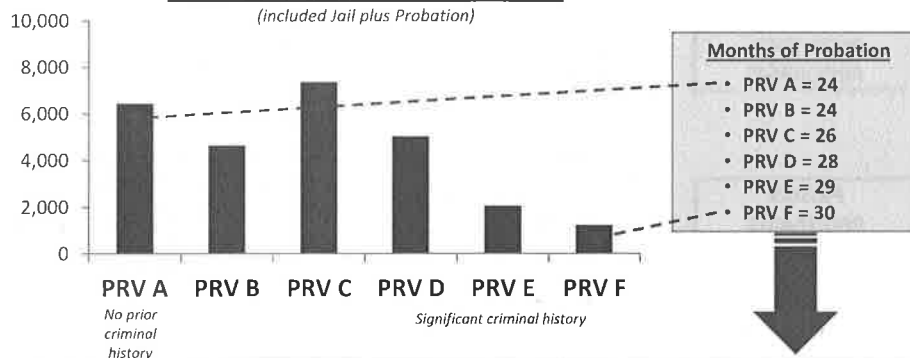
Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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29

Low-Risk Probationers Supervised Almost As Long as High-Risk Probationers

2012 SGL Sentences Involving Probation
(included jail plus probation)



Supervising low-risk individuals for 2 years provides little public safety benefit and uses resources that should be targeted to supervise higher risk individuals.

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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30

Guidelines Do Not Allocate Scarce Resources to Maximize Recidivism Reduction

Breakdown of most common offense for the 'G' grid, Possession of less than 25g of Certain Controlled Substance Schedule I or II (MCL 333.7403(2)(a)(v)).

4 PRV Groups

Pris: 34
Jail: 1,363
Avg: 106 days
Prob: 838
Avg: 20 mos

1,363 Jail
3.5 months avg.

838 Probation
20 months avg.

Costs to the Criminal Justice System

\$6.4M in local county costs
for jail confinement
(assuming average cost/day of \$45)

\$3.5M in state costs
for supervision
(assuming average cost/day of \$7)

Recidivism Reduction Potential

Up to 5% reduction if programs
provided. Potential increase.

Up to 20% Reduction in
Re-Arrests.

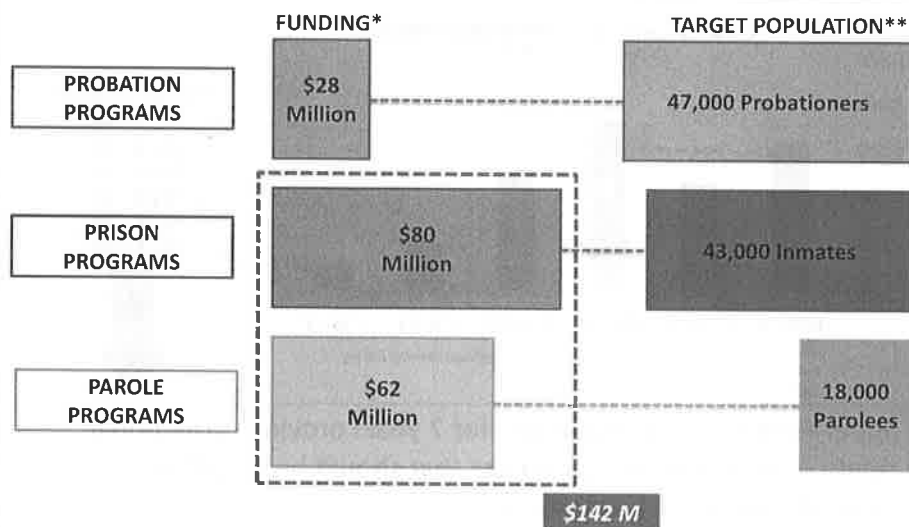
More cost-effective path towards
better public safety outcomes.

Source: Felony Sentencing (BIR) Data 2008-2012, Michigan Dept. of Corrections.

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31

Less Funding Devoted for Probationers Despite Higher Population and Impact on New Felony Offenses



* FY 2013 Funding

** Approximations based on 2012 population data

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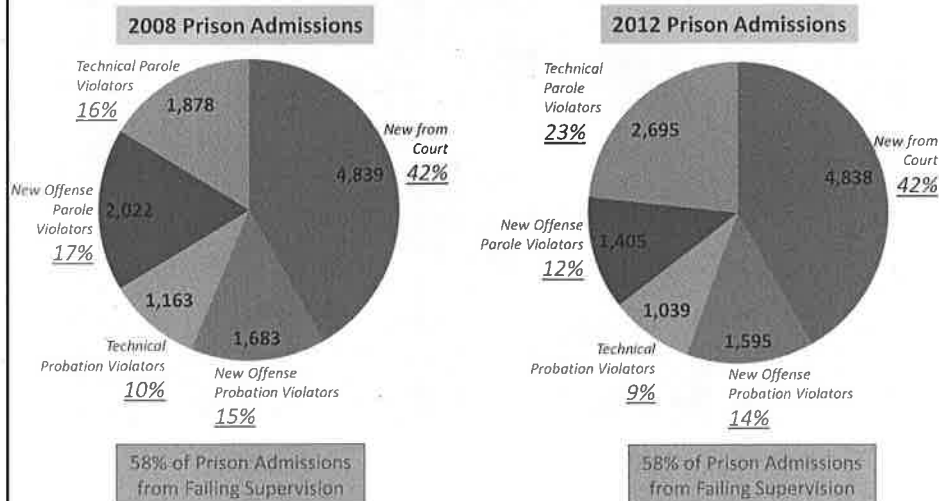
32

Findings by Theme

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Reducing Criminal Behavior	<ul style="list-style-type: none"> ❖ 7,000 new crimes annually by felons on supervision ❖ High-risk felons unsupervised and low-risk felons supervised like high-risk ❖ Resources may be misallocated
Holding Offenders Accountable	

Supervision Violators Make Up Almost 60% of All Admissions to Prison – Compliance Violators Alone Account for a Third

Composition of Prison Admissions: 2008 – 2012



Source: Prison Admissions Data 2008-2012, Michigan Dept. of Corrections.

Current Cost of Incarcerating Compliance Violators Exceeds \$150 Million Annually

Avg. Annual
Par. Tech. Violator Returns
2008-12

2,193

12.7 month average
length of stay yields
2,321 average daily pop

At \$98 per day, annual
cost to State =

\$83 Million

Avg. Annual
Prob. Tech. Violator Revocations
2008-12

1,030

24.9 month average
Length of stay yields
2,137 average daily pop

At \$98 per day, annual
cost to State =

\$76 Million

Source: Prison Admissions and Releases Data 2008-2012, Michigan Dept. of Corrections; Corrections Background Briefing, December 2012, House Fiscal Agency.

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35

Key Factors Associated with Successful Models of Swift and Certain Sanctioning

- ☐ Clear rules and violation responses so probationer is aware of expectations and consequences
- ☐ Strict monitoring
- ☐ Prompt sanction within days of detection
- ☐ Proportionate sanctions, tied to severity and risk
- ☐ Ability to bring violators into custody
- ☐ Compulsory treatment when appropriate

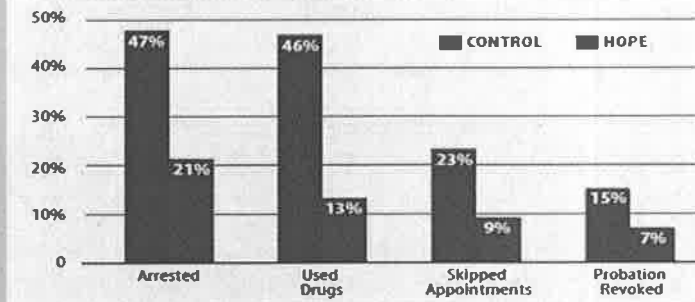
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36

Hawaii HOPE Reduces Re-Arrest, Drug Use, Jail Use

Hawaii HOPE

Intensive, random drug testing with swift, certain, and brief jail sanctions.



- Key principles of HOPE - **swift and certain probation violation response practices** - are being replicated with success in other jurisdictions.

Source: *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, Hawken, Angela and Mark Kleiman, December 2009.
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37

Michigan's Swift & Sure Program Unfamiliar to Many Judges; Detention Responses Unavailable to Probation Officers

Almost half of Michigan judges don't know about the State's Swift & Sure Sanctions Program:

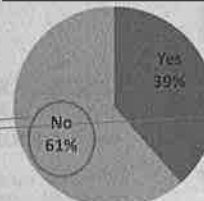
Are you familiar with SSSP?

Yes	57%
No	43%

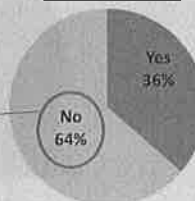
Do judges grant probation agents administrative authority to sanction probationers with brief jail stays in swift response to violations?

Almost 2/3 of respondents indicate quick jail-sanctioning authority not granted.

Probation Agent Responses



Judge Responses



- ✓ Of the agents and judges responding yes, most (98% and 81% respectively) believe these sanctions result in improved probationer behavior.
- ✓ Judges who don't grant this authority are concerned about violation of due process and do not believe the authority exists.

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38

Recap of Findings by Theme

Use of Beds	<ul style="list-style-type: none"> ❖ Length of stay and prison population are controlled by parole ❖ Guidelines limit prison sentencing and allow frequent sentencing to jail
Punishing Consistently	<ul style="list-style-type: none"> ❖ Opportunities for disparity are built in, and actual, significant disparity exists ❖ Sentence length creep costs over \$70 million annually
Reducing Criminal Behavior	<ul style="list-style-type: none"> ❖ High-risk unsupervised after jail and low-risk felons supervised like high-risk ❖ Resources may be misallocated ❖ So What? - 7,000 new crimes annually by offenders on supervision
Holding Offenders Accountable	<ul style="list-style-type: none"> ❖ Guidelines silent on violation response ❖ Forced choice between prison and post-prison supervision ❖ Uneven responses to violations, and limited adoption of swift and sure sanctions ❖ So What? - Compliance violators cost over \$150 million annually

Thank You



Ellen Whelan-Wuest
Policy Analyst
ewhelan-wuest@csg.org

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This material was prepared for the State of Michigan. The presentation was developed by members of the Council of State Governments Justice Center staff. Because presentations are not subject to the same rigorous review process as other printed materials, the statements made reflect the views of the authors, and should not be considered the official position of the Justice Center, the members of the Council of State Governments, or the funding agencies supporting the work.



Justice Reinvestment in Michigan

Overview

Background

In June 2013, Governor Rick Snyder, Senate Majority Leader Randy Richardville, House Speaker Jase Bolger, Chief Justice Robert Young, Department of Corrections Director Dan Heyns, Senate Democratic Leader Gretchen Whitmer, and House Democratic Leader Tim Greimel requested technical assistance from The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance to explore a data-driven "justice reinvestment" approach to review state corrections and criminal justice policies and spending and to determine the appropriate reinvestments in effective strategies that will increase public safety.

In 1998, Michigan introduced sentencing guidelines that provided judges with recommendations for setting an appropriate length for the minimum term of a sentence. Under the direction of a Sentencing Commission,¹ the guidelines were designed to ensure that adults with similar criminal histories convicted of similar offenses would receive comparable and appropriate sentences, regardless of where their cases are adjudicated. The guidelines have not been comprehensively evaluated since their adoption, and state leaders are interested in determining to what extent these guidelines have met their objective. State and local officials are also interested in learning to what extent the sentencing laws have been effective in deterring crime, holding people accountable for the crimes they commit, and reducing the likelihood that someone convicted of a crime will reoffend.

The Michigan Law Revision Commission (MLRC), a bipartisan group of legislators and appointed members, will lead the effort to examine the state's sentencing structure. Established in 1965, the MLRC was created by the state legislature to "examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and



recommending needed reforms."² In January 2013, state leaders charged the MLRC to partner with the Council of State Governments Justice Center (CSG Justice Center) to conduct a review of Michigan's sentencing guidelines and practices, which will include an analysis of length of stay in prison and the decision-making practices of the parole board.

Recognizing the opportunity to incorporate the sentencing study into a larger analysis of Michigan's criminal justice system, state leaders expanded the initial scope of work to include a comprehensive analysis of jail, prison, probation, and parole data. In order to interpret and understand the data, CSG Justice Center staff will convene focus groups and lead interviews with people working on the front lines of the Michigan criminal justice system. Based on these quantitative and qualitative analyses, CSG Justice Center staff will present findings to the members of the MLRC at public meetings. The MLRC will review these findings and assist in developing policy options for policymakers' consideration that are designed to increase public safety and make most efficient use of scarce resources.

This overview highlights the issues and potential areas of analysis surrounding Michigan's sentencing guidelines, as well as recent criminal justice trends based on initial analyses of available summary level data. In the upcoming months, the CSG Justice Center staff will continue to request, analyze, and contextualize this and other data to provide a greater understanding of the drivers and trends in Michigan's criminal justice system.

Michigan's Sentencing Guidelines

Michigan's sentencing system is one of the nation's most complex, yet has received limited evaluation since its implementation.

- Michigan policymakers have not undertaken a comprehensive analysis of the state's sentencing guidelines and their impact since their adoption in 1998.
- Michigan's sentencing guidelines comprise a complex system of sentencing grids meant to incorporate prior criminal conviction history and offense and offender variables across nine different offense classes (or grids). Without consideration of possible habitual offender penalties, there are 258 potential sentencing ranges applicable, a number that exceeds that of every other state but one.³
- Accounting for habitual offender status, determining the appropriate sentence depends on navigating nine grids with over one thousand cells and as many as 20 or more variables for any single sentence.⁴
- A report by the National Center for State Courts based on 2004 sentencing data found inconsistent application of the guidelines across the state.⁵
- Recidivism outcomes based on these different sentencing characteristics for similar offenders have not been analyzed.

Michigan's sentencing grids contain three types of cells:

Prison cells: recommended sentence exceeds a minimum of one year of imprisonment.

Straddle cells: sentence may be either to prison or an intermediate sanction.

Intermediate sanction cells: recommended sentence may include jail, probation, or other non-prison sanction.

- *Judges must include a rationale for departing from the presumptive sentence for prison cells and intermediate sanction cells.*
- *For cases whose score results in a straddle cell—meaning they are eligible for either prison or a community-based sanction—judges may impose very different types of sentences on defendants, and they can be under the control of the criminal justice system for very different lengths of time.*

While Michigan does have a truth-in-sentencing system, the current sentencing system provides little certainty to victims and the community about the amount of time individuals in prison will serve beyond their minimum sentence prior to release.

- Individuals sentenced to prison may spend widely varying amounts of time in prison or on supervision after release. This happens because once an individual satisfies the minimum sentence imposed by the court, the parole board determines on a case-by-case basis how much of the remaining maximum sentence length will be served.
- Maximum sentence lengths for criminal offenses are determined by statute. According to Department of Corrections reporting, the average minimum prison sentence imposed by the court is four years.⁶ The maximum sentence is often three or four times that length.⁷

Michigan's truth-in-sentencing system requires individuals to serve the entire minimum sentence in prison prior to being considered for parole. "Disciplinary time," or bad time, is accumulated for misconduct while in prison. This disciplinary time is not formally added to the minimum sentence, but the parole board must consider the amount of time each person has accumulated when it considers parole. There is no system for individuals to accumulate "good time" for complying with prison rules.

Criminal Justice Trends in Michigan

Michigan's violent crime rate is higher than the national average, but has declined over the past decade.

- Michigan's violent crime rate ranked 13th among all 50 states in 2011, with 445 reported violent crimes per 100,000 state residents. By comparison, the national violent crime rate was 386 per 100,000 U.S. residents.⁸
- Between 2000 and 2011, Michigan's violent crime rate dropped 20 percent, from 555 to 445 reported crimes per 100,000 Michigan residents. During the same period, the national violent crime rate decreased 24 percent, from 507 to 386 reported crimes per 100,000 U.S. residents.⁹
- In 2011, Michigan's property crime rate ranked 29th in the nation, with 2,612 reported property crimes per 100,000 residents, compared to 2,909 per 100,000 residents for the U.S. nationally.¹⁰
- Between 2000 and 2011, Michigan's property crime rate decreased 27 percent, from 3,555 to 2,612 reported crimes per 100,000 residents. Meanwhile, the national rate declined 20 percent, from 3,618 to 2,909 per 100,000 U.S. residents.¹¹

Arrests are down for violent crime, but are largely stable for property and drug crime.

- Between 2000 and 2011, arrests for violent index offenses in Michigan decreased 31 percent, from 18,257 to 12,520.¹²
- During this period, arrests for property index offenses decreased slightly, by 0.4 percent, from 35,490 to 35,352.¹³
- Between 2000 and 2011, arrests for drug-related offenses in Michigan increased 3 percent, from 34,069 to 35,124.¹⁴

The number of people sentenced to prison remains steady in recent years even though the number of people convicted of felony offenses for which a prison sentence is possible has declined.

- The number of people convicted of felony offenses declined by 9 percent between 2009 and 2012, from 55,592 to 50,833.¹⁵ However, the number of people sentenced to prison declined by only 1 percent during that same period. There were 10,702 sentences to prison in 2009 and 10,547 in 2012.¹⁶
- The proportion of felony convictions resulting in a prison sentence increased from 19 percent in 2009 to 21 percent in 2012.¹⁷
- The number of people admitted to prison for new crimes—crimes committed by people not currently under supervision—increased 3 percent, from 4,691 to 4,841 between 2009 and 2012.¹⁸

Revocation rates for parolees and probationers have declined since 2006, but revocation rates for probationers have increased slightly since 2010.

- Since 2006, the number of parolees revoked to prison has decreased by 21 percent, while the number of probationers revoked to prison has declined by 28 percent. Since 2010, however, the number of probationers revoked to prison has increased by 6 percent.¹⁹
- To assess whether the changes in revocation rates are due to changes in parolees' and probationers' behavior, changes in supervision practices, or both, a comprehensive analysis of rearrest rates is necessary. Such analysis will help inform how supervision trends impact jail and prison populations and also highlight areas where better supervision practices can improve outcomes.

Whereas Michigan's prison population declined significantly in the five-year period from 2006 to 2011, the number of people in state prison increased between 2011 and 2012, and this number is projected to continue growing over the next five years.²⁰

- Between 2006 and 2011, the Michigan prison population decreased 17 percent, from 51,515 to 42,904. However, between 2011 and 2012, the prison population increased 2 percent, from 42,904 to 43,594.²¹
- The Michigan Department of Corrections (MDOC) projects that, between 2012 and 2017, the state prison population will grow by 3.2 percent, from 43,594 to 44,978 people.²²

The Justice Reinvestment Approach

STEP

1

Analyze Data and Develop Policy Options

CSG Justice Center staff will conduct a comprehensive analysis of crime, arrest, sentencing, probation, prison, parole, and behavioral health data. The analyses will result in findings regarding prison and jail capacity, length of stay in jail or prison, and the effectiveness of supervision practices.

To incorporate perspectives and recommendations from across Michigan, the CSG Justice Center will collect input and recommendations from criminal justice system stakeholders including prosecuting attorneys; the defense bar; judges; law enforcement executives; service providers and community leaders; victims, survivors, and their advocates; local officials; and probation and parole officers, among many others.

In collaboration with the MLRC, which will review analyses and share recommendations, CSG Justice Center staff will analyze data to determine the extent to which sentencing guidelines and parole processes are meeting their intended objectives and will develop policy options to improve the achievement of these objectives. Policy options will also be proposed to improve the effectiveness of the criminal justice system's ability to prevent crime, hold people accountable for their crimes, and reduce recidivism.

STEP

2

Adopt New Policies and Put Reinvestment Strategies into Place

If the policy options are approved as legislation and enacted, Michigan policymakers must ensure that the policies are implemented effectively. The CSG Justice Center will assist Michigan with translating the new policies into practice and make certain that related programs and system investments achieve projected outcomes. This assistance includes developing implementation plans with state and local officials and keeping policymakers apprised through frequent progress reports and testimony to relevant legislative committees. The implementation plan will include a detailed list of technical assistance to be delivered by the CSG Justice Center staff. Michigan will also have the opportunity to request additional technical assistance to meet important one-time implementation needs, such as enhancing the skills of the probation and parole supervision workforce.

STEP

3

Measure Performance

Finally, the CSG Justice Center will ensure that Michigan officials receive brief, user-friendly, and up-to-date information that explains the impact of enacted policies on prison populations, criminal activity, and recidivism. Typically, this includes tracking multiple indicators that make it easy for policymakers to understand—in real time—the changes occurring in various components of the criminal justice system.

Notes

1. The Sentencing Commission, established pursuant to Public Act 1994 445 to oversee development of the sentencing guidelines, was dissolved in 2002.

2. The MLRC was established pursuant to Public Act 1965 412 (See MLRC 4.1401 *et seq*). The MLRC did not create the sentencing guidelines that were adopted in 1998.

3. Neal B. Kauder and Brian Ostrom, "State Sentencing Guidelines: Profile and Continuum," (Williamsburg: National Center for State Courts, July 2008).

4. *Ibid*. Michigan Sentencing Guidelines Manual prepared by State Court Administrative Office. There are 1,032 potential sentencing options when including habitual offender sentencing options (258 sentencing ranges multiplied by four possible habitual classifications).

5. "Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States," National Center for State Courts (2008), available at: <http://www.ncsc.org/~media/microsites/files/csi/assessing%20consistency.ashx>.

6. Michigan Department of Corrections, "Observations Regarding Felony Sentencing," September 7, 2012 (PPT).

7. Council of State Governments Justice Center, *Justice Reinvestment in Michigan: Analysis of Crime, Community Corrections, and Sentencing Policies* (New York: Council of State Governments Justice Center 2009).

8. United States Department of Justice, Federal Bureau of Investigation, "Crime in the United States 2011," accessed April 2012 at: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011>. The FBI Uniform Crime Report includes under its violent crime category the following offenses: murder and non-negligent manslaughter; forcible rape; robbery; and aggravated assault.

9. United States Department of Justice, Federal Bureau of Investigation, "Crime in the United States 2000," accessed April 2012 at: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2000/tocoo.pdf>.

10. United States Department of Justice, Federal Bureau of Investigation, "Crime in the United States 2011." The FBI Uniform Crime Report includes under its property crime category the following offenses: burglary; larceny-theft; and motor vehicle theft.

11. United States Department of Justice, Federal Bureau of Investigation, "Crime in the United States 2011."

12. Michigan State Police, "Michigan Incident Crime Reporting" (2011) and "Uniform Crime Report" (2000).

13. *Ibid*.

14. *Ibid*.

15. Michigan Department of Corrections, "Statistical Report Supplement" and "Court Dispositions 2003-2011." Office of Community Alternatives, "Statewide Disposition: Fiscal Year 2012."

16. *Ibid*.

17. *Ibid*.

18. Michigan Department of Corrections. "Statistical Reports" (2006-2011) and "Intake Profile Report" (2012).

19. *Ibid*.

20. The prison population figures refer to the population as of December 31, the last day of the calendar year.

21. Michigan Department of Corrections, "Statistical Report" (2011) and "Prison Population Projections Report" (February 2013).

22. Michigan Department of Corrections, "Prison Population Projections Report" (February 2013).

To learn more about the justice reinvestment strategy in
Michigan and in other states, please visit:
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The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers in the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities.



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To learn more about the Public Safety Performance Project, please visit: pewstates.org/publicsafety.

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PROJECT CONTACT:

Ellen Whelan-Wuest, Policy Analyst
ewhelan-wuest@csg.org

csgjusticecenter.org